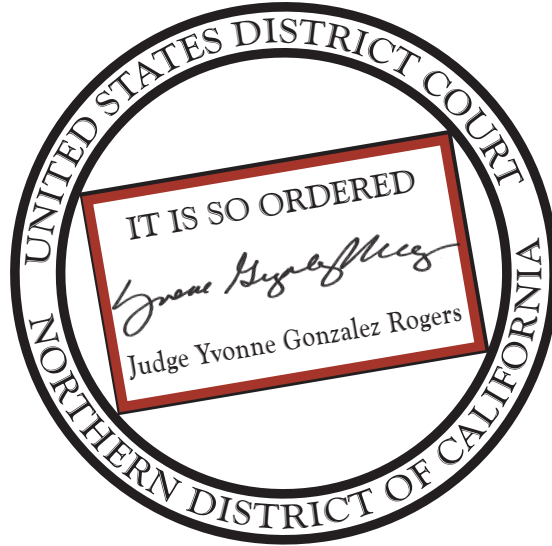


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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 **CENTER FOR BIOLOGICAL DIVERSITY**
18 *et al.,*

19 Plaintiffs,

20 v.

21 **ANDREW WHEELER**, in his official
22 capacity as the Acting Administrator of the
23 United States Environmental Protection
24 Agency,

25 Defendant.

Case No. 4:17-cv-07209-YGR

**JOINT STIPULATION OF DISMISSAL
WITH PREJUDICE**

1 WHEREAS, Plaintiffs Center for Biological Diversity, Center for Environmental Health,
2 and Clean Air Council alleged in their Complaint that Defendant, Andrew R. Wheeler, in his
3 official capacity as the Acting Administrator of the U.S. Environmental Protection Agency
4 (“EPA”) has failed to make findings of failure to submit nonattainment state implementation
5 plans (“SIPs”) for various nonattainment areas or portions of nonattainment areas for various
6 elements of Clean Air Act (“CAA”) subsection 189(a)(2), 42 U.S.C. § 7513a(a)(2), for the 2012
7 fine particulate matter (“PM_{2.5}”) national ambient air quality standards (“NAAQS”) (Dkt. No. 1);

8 WHEREAS, on February 26, 2018, EPA answered the Complaint (Dkt. No. 27);

9 WHEREAS, EPA made findings of failure to submit a SIP for each of the states and
10 elements identified in Table 1 of the Joint Case Management Statement (Dkt. No. 28) except for
11 the State of Idaho that submitted a SIP addressing the nonattainment new source review plan
12 requirements (“NNSR”) on March 20, 2018 (the “Idaho Claim”), and thus, it is EPA’s position
13 that no finding was required as to that element. *Final Rule*, 83 Fed. Reg. 14759 (Apr. 6, 2018).
14 EPA thus notified the Court on April 6, 2018 that it believed “[a]ll substantive claims in the
15 Complaint (Dkt. No. 1) are therefore moot;”

16 WHEREAS, Plaintiffs are concerned that it is possible that the State of Idaho may claim
17 in the future that it has withdrawn its March 20, 2018 submittal and that this would necessitate
18 Plaintiffs bringing a new claim for EPA’s failure to make a finding of failure to submit with
19 regard to the State of Idaho;

20 WHEREAS, EPA reserves all defenses related to the Idaho Claim presented in the
21 Complaint and any future allegation related to a SIP addressing the NNSR requirements for the
22 2012 PM_{2.5} NAAQS for the West Silver Valley, Idaho: Shoshone County (part) nonattainment
23 area, 80 Fed. Reg. 2206, 2232 (Jan. 15, 2015);

24 WHEREAS, the parties agree that all substantive claims are now moot;

25 WHEREAS, the parties have resolved Plaintiffs’ claim for cost of litigation pursuant to
26 CAA section 304(d), 42 U.S.C. § 7604(d);

1 NOW THEREFORE, the parties stipulate that pursuant to Fed. R. Civ.
2 Proc. 41(a)(1)(A)(ii):

- 3 1. All claims except as the Idaho Claim are dismissed with prejudice.
- 4 2. The Idaho Claim is dismissed without prejudice.
- 5 3. Plaintiffs' claim for costs of litigation is dismissed with prejudice.

6
7 Respectfully submitted,

8 Date: October 5, 2018

/s/ Robert Ukeiley (email auth. 10/5/18)

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28 *Counsel for Plaintiffs*

1
2 Date: October 5, 2018

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Attorneys for Defendant

~~[PROPOSED]~~ ORDER

Pursuant to Fed. R. Civ. P. 41(a)(1)(A), the parties have jointly stipulated to dismissal of this matter (Dkt. No. 43). In light of the stipulated dismissal, the compliance hearing set for Friday, October 12, 2018 on the Court's 9:01 a.m. calendar is hereby VACATED.

IT IS SO ORDERED.

DATED this 9 day of October, 2018.


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE